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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

ARIEL ABITTAN,

PLAINTIFF,

v.

LILY CHAO (A/K/A TIFFANY CHEN, A/K/A  
YUTING CHEN), et. al.,

DEFENDANTS.

Case No. 5:20-CV-09340-NC

**PLAINTIFF'S NOTICE REGARDING  
AMENDED COMPLAINT**

Plaintiff Ariel Abittan ("Plaintiff") hereby gives notice regarding the Amended Complaint [ECF No. 142]. Pursuant to this Court's Order [ECF No. 141], on June 3, 2022, Plaintiff filed an Amended Complaint ("AC") [ECF No. 142]. Plaintiff understood Defendants' response deadline to be fourteen (14) days after service of the amended pleading—*i.e.*, June 17, 2022. To date—twenty-six (26) days after service—Defendants have not filed a response.

When assessing the filing of entries of default, Plaintiff's counsel re-reviewed this Court's Order to confirm Defendants' responsive deadline and discovered that Plaintiffs' counsel had inadvertently overlooked the Court's instruction not to add any additional claims or parties without advance leave of Court. *See* [ECF No. 141].

As a result of this oversight, Plaintiff filed the Amended Complaint—including new claims, one new named party, and Does 1-100—without first seeking leave of Court. Specifically, the Amended Complaint:

- Amends the derivative claims to be direct claims;
- Adds a declaratory judgment claim (First Cause of Action) and alternative breach of partnership agreement claims against Lily Chao and Damien Ding (Second and Third Causes of Action);
- Adds alternative breach of fiduciary duty claims against Damien Ding (Fourth and Seventh Causes of Action);
- Adds Temujin Cayman as a defendant in a declaratory judgment claim (First Cause of Action), breach of partnership agreement claim (Third Cause of Action), and breach of fiduciary duty claim (Seventh Cause of Action) and adds a standalone breach of contract claim against Temujin Cayman (Thirteenth Cause of Action);
- Adds Yuting Chen as a new defendant, with claims for declaratory judgment (First Cause of Action), aiding and abetting breach of fiduciary duty (Sixth Cause of Action), conversion (Tenth Cause of Action), unjust enrichment (Nineteenth Cause of Action), and accounting (Twenty-Second Cause of Action); and
- Adds Does 1-100 as defendants, with claims for declaratory judgment (First Cause of Action), RICO (Seventeenth Cause of Action), RICO Conspiracy (Eighteenth Cause of Action), and unjust enrichment (Nineteenth Cause of Action).

Each addition arises directly out of Plaintiff's ongoing investigation into the facts and parties involved in Defendants' fraudulent scheme.

Plaintiff acknowledges that there is ambiguity as to whether the AC has been accepted as the operative complaint. Accordingly, Plaintiff respectfully requests that the Court:

- (a) deem Plaintiff's June 3, 2022 Amended Complaint the operative complaint in this action;
- (b) in the alternative, order Plaintiff to re-file a version of the Amended Complaint that removes the newly-added causes of action (First, Second, Third, Sixth, Tenth, Thirteenth, and Twenty-Second Causes of Action), removes newly-added parties from existing causes of action (Fourth, Seventh, and Nineteenth Causes of Action), and removes Defendant Yuting Chen and Defendants Does 1 -100 as defendants; and
- (c) set a deadline for Defendants' response to the Amended Complaint.

Dated: June 29, 2022

**ROCHE FREEDMAN LLP**

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